



Roadless Area Conservation

Issue:

Protection of high value roadless areas on both the Tongass and Chugach National Forests is of local and national importance, particularly for wildlife and biodiversity, recreation, and tourism.

Background:

Inventoried roadless areas in the Alaska Region include 9.2 million acres (55 percent) of the Tongass National Forest and 5.4 million acres (99 percent) of the Chugach National Forest. In addition, congressionally-designated Wilderness makes up 5.8 million acres (34 percent) of the Tongass. The 2002 Chugach Forest Plan decision recommended that 1.4 million of the roadless acres on the Chugach be added to wilderness, but Congress has yet to take action on that recommendation. Within the State of Alaska as a whole, there is an extensive network of federally-protected acres. Federal lands comprise 59 percent of the State, and 40 percent of Federal lands in Alaska are in conservation system units (note: Texas is about 40 percent of the size of Alaska).

Recent History of Roadless Areas:

The Roadless Area Conservation Rule (Roadless Rule) has been the subject of several lawsuits since 2001. Specifically in Alaska, in 2001, the State of Alaska filed a complaint in the United States District Court, District of Alaska, alleging statutory and administrative-law violations related to the U.S. Department of Agriculture's (USDA's) promulgation of the 2001 Roadless Rule and its application in Alaska. USDA and the State of Alaska reached a settlement in 2003, and USDA subsequently issued a rule temporarily exempting the Tongass National Forest from the Roadless Rule. On March 4, 2011, the Alaska District Court set aside the Tongass Exemption and reinstated the Roadless Rule on the Tongass National Forest (*Organized Village of Kake, et al., v. USDA, et al.*, Case No. 1:09-cv-00023). A March 2014 ruling by the Ninth Circuit Court of Appeals reversed that decision (*Organized Village of Kake v. USDA* (No. 11-35517, 9th Cir.)). The Ninth Circuit subsequently granted the plaintiffs' petition for rehearing en banc, held in December 2014 before an eleven judge panel. On July 29, 2015, a six judge majority of the en banc panel found that USDA's justification for the Tongass Exemption was inadequate under the Administrative Procedure Act, holding it did not provide a reasoned explanation for contradicting the findings in the 2001 Record of Decision for the Roadless Rule. The five dissenting judges maintained that USDA was not arbitrary and capricious when it exempted the Tongass National Forest from the Roadless Rule in 2003. The majority of the panel upheld the District Court's reinstatement of the Roadless Rule. Consequently, the Roadless Rule remains in effect in Alaska, and the Forest Service continues to apply the Rule to the Tongass and Chugach National Forests.

On June 16, 2011, the State of Alaska filed a complaint in the U.S. District Court for the District of Columbia, facially challenging the promulgation of the Roadless Rule (*State of Alaska v. USDA, et al.*, Case No. 1:11-cv-01122). On March 25, 2013, the U.S. District Court for the District of Columbia dismissed the State of Alaska's challenge to the Roadless Rule, determining it to be beyond the general six-year statute of limitations for civil actions against the government. In November 2014, the D.C. Circuit reversed and remanded the case to the District Court to hear the merits of the State's challenge to the Roadless Rule. The District Court denied the cross-motions for summary judgment without prejudice, and instructed the parties to re-brief their motions to address the potential res judicata effects of *Organized Village of Kake, et al. v.*

USDA, et al., 795 F.3d 965 (9th Cir. 2015). On September 20, 2017, the D.C. District Court again rejected the State's challenge to the Roadless Rule, finding that the State had failed to show violation of any Federal statute in the USDA's promulgation of the Roadless Rule. The State of Alaska appealed the District Court's decision on November 28, 2017, and the case remains pending before the D.C. Circuit Court of Appeals.

The Chief of the Forest Service continues to review certain activities planned in roadless areas to ensure the Forest Service is applying a consistent approach to implementation of the Roadless Rule and doing all it can to protect roadless area characteristics. The Chief's memo affects only the process by which such activities are authorized. To date, the Alaska Region has requested and received approval for approximately 57 projects within inventoried roadless areas, including, among other things, several energy (hydroelectric) and mineral exploration projects and two intertie projects. These projects have been cleared in a timely manner.

Line officers in the Alaska Region, with appropriate review by the Regional Forester, have the authority to approve timber cutting or removal in certain situations such as emergencies; activities incidental to implementation of an existing special use authorization; or the cutting, sale, or removal of generally small diameter timber for specified purposes, such as wildlife habitat improvement and administrative and personal use. Line officers also have the authority to approve free use to Alaskan settlers, miners, residents and prospectors. Such use should occur in inventoried roadless areas only when needs cannot be met in the roaded land base. When personal use timber is collected from inventoried roadless areas, it shall be done in a manner that maximizes the protection of the roadless character and wildlife habitat, recreation, and other values associated with roadless areas.

Current Situation:

On August 30, 2018, USDA initiated an environmental impact statement (EIS) and public rulemaking process to address the management of inventoried roadless areas on the Tongass National Forest with the publication of a Notice of Intent in the *Federal Register*. This rulemaking is the result of a January 2018 petition submitted by Alaska Governor Bill Walker on behalf of the State of Alaska, pursuant to the Administrative Procedures Act. The petition was accepted by the Secretary of Agriculture in April 2018. The intent is to evaluate the regulatory exemption requested in the petition, as well as other management solutions that address infrastructure, timber, energy, mining, access, and transportation needs to further Alaska's economic development, while still conserving roadless areas. Public meetings will be held throughout Southeast Alaska in September 2018 to help determine the nature and scope of the environmental, social, and economic issues related to this rulemaking that should be analyzed in depth in the Draft EIS. The Draft EIS is expected in early summer 2019, with a Final EIS in spring 2020 and final rule in June 2020.

More Information:

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